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ABSTRACT

Prepared to assist the Board of Governors of the California Community Colleges in their review of the recommendations in the Education Code Review, this report presents information on the evolution of the review project, including a specific discussion of the remaining processes for review and modification, and a summary of the major issues and recommendations emerging from the section-by-section review. Major issues discussed include: (1) shifting the governance arena; (2) assigning responsibilities and designating authority; (3) clarifying the role of county and local officials; (4) clarifying roles regarding the reorganization of district territory; (5) unburdening the management and control of district property; (6) implementing the Permissive Code, which permits the governing board of a community college district to initiate and carry on any program or activity that is not in conflict with the law or the purposes of the school districts; (7) specifying the mission of the community colleges; (8) determining the finance mechanism; (9) delineating the role of the legislature; and (10) reviewing statutes on the employment of personnel. Appendices provide the text of relevant legislation. (EJV)

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Education Code Review

by

Thomas J. Nussbaum

Discussed as Agenda Item 10
at a Meeting of the Board of Governors
of the California Community Colleges
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EDUCATION CODE REVIEW

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For Information

Background

In the coming months, the Board of Governors will be called upon to review all recommendations in the Education Code Review, a two-year project that will lead to the introduction of legislation in 1988. The Board will also be called upon to resolve issues and concerns of the field raised through consultation. Finally, the Board will be called upon to direct and authorize changes to the legislation as it proceeds through the Legislature.

To prepare the Board for these tasks this item presents information on the evolution of the project, including a specific discussion of the remaining processes for review and modification, and a summary of the major issues and recommendations emerging from the section-by-section review.

Analysis

The Education Code Review is an effort to improve and clarify the structure of community college governance by making the statutory body of law pertaining to community colleges (about 2200 statutes) consistent with a widely agreed-upon delineation of the appropriate roles of the Board of Governors and district governing boards. The project began early in 1986 with a section-by-section analysis of those 2200 statutes against 1969 legislation which delineated the major roles of the Board of Governors and local governing boards. The analysis, released in November 1986, has been widely distributed.

Recently, the analysis has been updated to reflect the new delineation of governance functions developed through consultation and adopted by the Board in May of 1987. A special advisory committee as well as a group of attorney have also reviewed all recommendations.

By late January, changes resulting from the advisory committee review, the attorney group review, and other field review will be incorporated into *Education*

Code Review (Revised). The recommendations in this document will be used as the basis for drafting the initial legislation to revise the Education Code.

By early February, the *Education Code Review: Revised* will be published and widely distributed for review in the Chancellor's consultation process. The recommendations will be under continuing review, as necessary, from February through August, with most consultation occurring by June.

At its March 3-4, June 2-3, and August 18-19 meetings, the Board will have the opportunity to review not only all recommendations, but also to review and resolve any remaining issues brought up through consultation. As directed by the Board, the originally introduced legislation will be amended as it proceeds through the legislative process.

Because of the magnitude and complexity of the task, the Board's role in the Education Code Review has been designed as one of review and modification of a consulted-upon work product rather than as one of formative involvement in the section-by-section analysis. If the Board desires a different degree of oversight for the project, direction to staff would be appropriate at this time.

Staff has identified ten major issues and recommendations that emerge from the section-by-section analysis, and two of these are especially important for Board attention. The first issue involves the conversion of legislative policy (statute) to Board policy (regulation). As one transition mechanism to engender greater legislative confidence in making these conversions, staff is recommending in about 200 instances that the Legislature specifically enact the text of regulations the Board is required to initially adopt. In this manner the Legislature will repeal a statute and direct the Board of Governors to adopt specific language as a regulation. These *regulations* will be developed by staff and be reviewed through the legislative process. With enactment of the legislation, the regulations will go directly into effect with little or no review from the field or the Office of Administrative Law. Once transferred, however, the regulations will be under the full authority of the Board, to be amended or repealed through consultation, and subject to all administrative and procedural requirements for the adoption of regulations.

A second major issue arises with respect to repealing statutes which are no longer necessary in light of the fact that the Education Code has been made permissive. Many community college officials are reluctant to see specific authorizations disappear from statute. They believe clear and direct statutory authorizations are helpful when their authority to act is being challenged by other organizations and interests both in and out of the district. They maintain that these clear statutory authorizations prevent both disputes and lawsuits.

Leaving specific authorizations in the Code, although they are unnecessary in light of the permissive code, is not without consequences. First, any modification or addition to the policy must be taken to the Legislature. The presence of specific

authority will tend to limit that authority as described. This is so because the presence of prescriptive authority regulating any particular subject will tend to be seen as preemption by the Legislature. Thus, the tendency to legislate is reinforced. Second, the specific authorizations will only prevent disputes and lawsuits if they are directly applicable. If individuals and organizations questioning district authority were instead pointed to the authority of the permissive code, and there were no specific statutory authorizations in place which could be construed as limiting this authority, there is a greater probability that the broad authority of the permissive code would be compelling.

To provide additional legal force and effect to the notion that repeal of a specific authorization is not meant to imply that the specific authority no longer exists, staff has developed bill language that will apply to each and every section of the code being repealed as unnecessary in light of the permissive code.

Staff Presentation: Thomas J. Nussbaum
Vice Chancellor and General Counsel

Evolution of the Education Code Review

In adopting the 1986 Basic Agenda (December 1985), the Board of Governors resolved to clarify and improve the governance structure for community colleges. The second of two initiatives to address this goal provides:

The Board of Governors, in consultation with both the community colleges and the State, will conduct a review of the Education Code with the aim of identifying revisions to clarify governance and to provide a governance structure which is both postsecondary and collegial in nature....

During 1986, both the Commission for Review of the Master Plan and the Joint Legislative Committee for Review of the Master Plan also recommended a comprehensive review of all statutes affecting community colleges.

In committing to review the Education Code, several critical elements about the structure of community college governance were recognized:

- First, the Education Code both creates and defines the structure of community college governance. The statutes of the Legislature establish the powers, duties, and decision-making structures for the delivery of community college education. The Legislature has prescribed the roles and responsibilities of both the Board of Governors and local districts -- sometimes with great prescriptiveness and sometimes in broad or general terms. To the extent there are contradictions or inconsistencies in these statutes, the structure of governance is flawed, and the exercise of governance functions is impaired.
- Second, every statute pertaining to community colleges must be considered in the effort to review and improve the community college governance structure. Each and every statute that addresses community colleges has either direct or indirect implications for the structure of governance. For instance, if a statute intricately prescribes particular responsibilities for the Board of Governors, the Legislature is also indicating that it does not choose to delegate general or broad authority to the Board. The Legislature is also indicating that it does not choose to authorize districts to act without oversight by the Board. Thus, the fact that a statute exists automatically entails decisions about governance roles. Accordingly, only by reviewing all statutes can a coherent structure or concept of governance be reflected in the body of laws pertaining to community colleges.
- Third, the Education Code contains numerous inconsistencies and contradictions regarding the determination and application of governance responsibilities. On one hand there is an extensive body of statutes of K-12 origin that prescriptively regulate the activities of districts and the Board of Governors; on the other hand, there are a few general statutes (especially a body of law enacted in 1969) which confer broad authority to both the Board of Governors

and districts to establish policy in many of the same areas occupied by specific legislative policy.

- Finally, in order to clarify and improve the governance structure it was necessary to work with some basic delineation of governance responsibilities against which all Education Code provisions related to community colleges can be reviewed. In order to determine whether roles and responsibilities are appropriately dictated by the Legislature, or appropriately assigned to the Board of Governors, community college districts, and other entities, it was necessary to apply each statute against some broad delineation of the respective functions or roles of district governing boards, the Board of Governors, the Legislature, and others.

The basic delineation of governance responsibilities used to conduct the initial review of the Education Code was a piece of 1969 legislation enacted shortly after the Board of Governors was created (see Appendix A) that specified the major roles of the Board of Governors and district governing boards. In November of 1986, the Chancellor released a 283-page report which analyzed some 2,200 provisions of statute against this 1969 delineation of functions legislation. The analysis specifically recognized that it was just a starting point for discussion:

"This is not to say, however, that there is anything magic about the 1969 delineation of functions legislation. Nor is it to say that all provisions of the Education Code which are inconsistent with the delineation should be forthwith repealed or amended. What must be said is that the 1969 legislation is law, and that it is the only existing legal statement that comprehensively delineates the respective roles of districts and the Board of Governors. The usefulness of the delineation, therefore, is that it serves as a template to systematically examine all community college statutes so as to determine where there are contradictions or inconsistencies. The ultimate goal of clarifying and improving governance requires that these inconsistencies and contradictions be addressed; but this does not necessarily mean they will all be addressed in favor of removing or correcting everything that is inconsistent with the delineation. It could also lead to alterations in the basic delineation itself.

As a starting point for discussion, this document provides a legal analysis that identifies contradictions and inconsistencies between the 1969 delineation and all other Education Code provisions related to community colleges. Recommendations for change have been made, consistent with the assumption of identifying all modifications necessary to implement the existing basic delineation of functions. Whether these recommendations should be accepted, or whether they should be rejected in lieu of changes in the basic delineation, will be the subject of an extensive process of review and consultation."

While the analysis was well received, a number of factors prompted a decision to postpone legislation to carry out its recommendations. A number of community college officials and organizations were uncomfortable with using the 1969 delineation, even if it was the law, as the template for the review. There was concern that the delineation might not be current. Major events such as collective bargaining, the permissive code, and Proposition 13 had occurred since 1969. There was also concern that the delineation might not reflect governance recommendations of the Commission for Review of the Master Plan, which was still studying the subject. In addition, several officials pointed out that many in the field were either unaware of the delineation, or did not, at first blush, support the broad power it conferred to the Board of Governors. Finally, many officials felt that the Joint Legislative Committee's reform bill (AB 1725) required full attention, and that it was premature to concentrate on a technical rewriting of the Education Code.

Consequently, during the period of December 1986 to May 1987, attention turned instead to forging a new delineation of functions for governance. Using the 1969 legislation as a starting point, and working closely with community college officials and organizations, the new statement was developed, widely endorsed, and subsequently incorporated into AB 1725 (see Appendix B). By August of 1987, the new delineation was largely understood and owned from not only within the system, but also by the Legislature.

At first glance, the 1969 legislation and the new statement are remarkably similar. However, there are some subtle but critical distinctions:

- (1) The new delineation has been designed to function in the context of a *system* that operates **apart from but in response to the state**. The Board of Governors' roles are described, not so much as those of an arm of the state, but rather as those of a systemwide governing board that is joined with local governing boards to carry out and respond to the state interest.
- (2) The new delineation makes explicit the primary role of the Board and relates other functions to this primary role. The 1969 legislation listed the Board's major functions in twenty separate statutes, many of which cast the Board as an arm of the state to carry out regulatory functions. The relative importance or interrelationship of these statutes is nowhere described. The new delineation, on the other hand, both **consolidates** all major functions into a single section and **interrelates** these provisions in terms of their effect. The primary role of the Board is to provide leadership and direction for the continuing development of the system, with its work at all times to permit the maximum permissible degree of local authority and control. Subject to (and in furtherance of) this primary role, the Board is provided very broad and substantial authority to regulate. The systemwide governing board's role is thus to ensure that districts carry out their roles, and also to ensure that the state interest is carried out. Except when necessary to further or protect an important state interest, the role of the Board should not be directive or prescriptive from the

outset. Instead, the Board should continuously monitor the efforts of districts, attempt to lead and shape those efforts, and then direct those efforts if they remain contrary to the state's interest.

- (3) The 1969 legislation is, in places, technically inaccurate, outdated, or incomplete. The new delineation cures these technical problems. Each 1969 statute was reviewed in light of changes since being enacted, and in light of recommendations of the Commission for Review of the Master Plan and the Joint Legislative Committee. The new delineation, for instance, incorporates the concept of the *permissive code*, implements Master Plan Commission recommendations to clarify and strengthen the role of academic senates, and requires consultation within the system. Accordingly, the new delineation is an accurate and up-to-date statement which can be more readily applied against all other statutes within the Education Code.

After the development and widespread acceptance of the new delineation, and after its incorporation into AB 1725, work on the technical rewriting of the Code resumed. In November 1987, the *Addendum to the Education Code Review* was published. This 23-page document noted recommendations in the original document which should be changed because of differences between the 1969 delineation and the new delineation. In addition, the *Addendum* noted Education Code provisions which had been added, amended, or repealed since the November 1986 analysis.

Two steps to accomplish the first stage of field review were also initiated in November: a special advisory committee was appointed to review each recommendation; and, community college districts, organizations, and other interested parties were invited to review and comment on the recommendations (see Appendix C).

The special advisory committee (see Appendix D for membership) included one representative each from the major community college organizations. In addition, the author's (Senator Hart) office, the Legislative Analyst, the Postsecondary Education Commission, and the Legislative Counsel (who will draft the bill) were also represented. The Department of Finance and students were invited to participate, but either declined to participate or failed to designate a representative.

The Special Advisory Committee met on four occasions (about 25 hours of meetings) and reviewed all recommendations. Extensive preparation was required and all participants obliged; meetings were disciplined and fast-paced. Hundreds of changes, mostly technical, were made in response to Committee advice. In addition, approximately 90 percent of the recommendations were supported as originally proposed.

In early January, a group of attorneys specializing in community college law, together with a member of the Board of Governors, also met to review all recommendations.

By late January, changes resulting from the advisory committee review, the attorney group review, and other field review will be incorporated into *Education Code Review (Revised)*. The recommendations in this document will be used as the basis for drafting the initial legislation to revise the Education Code.

By early February, the *Education Code Review: Revised* will be published and widely distributed for review in the Chancellor's consultation process. The recommendations will be under continuing review, as necessary, from February through August, with most consultation occurring by June.

At its March 3-4, June 2-3, and August 18-19 meetings, the Board will have the opportunity to review not only all recommendations, but also to review and resolve any remaining issues brought up through consultation. As directed by the Board, the originally introduced legislation will be amended as it proceeds through the legislative process.

Major Issues and Recommendations

At the outset, it is helpful to consider the major issues and recommendations that have emerged from the section-by-section legal analysis of Education Code provisions. To the extent there is understanding of these issues and general agreement regarding their resolution, the section-by-section review of the Code will be greatly expedited.

1. *Shifting the Governance Arena:* The Education Code contains hundreds of specific statutes regulating activities which the Legislature turned over to the Board of Governors or local districts in the 1969 delineation of functions legislation, and which the new delineation also turns over to the Board of Governors or local districts. The existence of these specific statutes precludes the establishment of policy by either the local boards or the Board of Governors. In order to implement the intent of the delineation of functions legislation, therefore, many of these specific statutes should be repealed.

A problem arises, however, with simple repeal of statutes: there will be an absence of specific policy on such subjects until local governing boards or the Board of Governors adopt their own policies. In order to solve this problem, many of the statutes are repealed with a deferred effective date. Also, the Board of Governors is directed in many instances to adopt the content of specific statutes into regulations of the Board. Through this technique there will be no lapse in specific legal policy on a given matter as authority to control the matter is transferred from the Legislature to the Board of Governors.

A second issue which must be dealt with in shifting the governance arena is the development of appropriate transition mechanisms to engender greater trust

by the Legislature and community college constituencies. Simply arguing that a statute should be repealed because the delineation assigns the policymaking authority to the Board of Governors or districts will often not be enough. Because of the currently flawed structure of community college governance, there is less than universal confidence or trust in the Board of Governors or districts to carry out these specific policymaking functions.

As one transition mechanism to engender greater legislative confidence and trust, staff is recommending in about 200 instances that the Legislature specifically enact the text of regulations the Board is required to initially adopt. In this manner the Legislature will repeal a statute and direct the Board of Governors to adopt specific language as a regulation. These regulations will be developed by staff and be reviewed through the legislative process. With enactment of the legislation, the regulations will go directly into effect with little or no review from the field or the Office of Administrative Law. Once transferred, however, the regulations will be under the full authority of the Board, to be amended or repealed through consultation, and subject to all administrative and procedural requirements for the adoption of regulations.

2. *Assigning Responsibilities and Delegating Authority:* District governing boards and the Board of Governors are ultimately accountable for carrying out the directives of the Legislature. Hundreds of Education Code provisions confound this accountability, however, because instead of directing district governing boards and the Board of Governors, they direct officers and employees of these governing boards, sometimes with great prescriptiveness. When statutes prescribe powers and duties of the systemwide Chancellor, units within the Chancellor's Office, district superintendents, district business officers, college presidents, and even college faculty, governing boards lose not only their ability to provide accountability, but also their power to decide the best method of delegating powers and duties.

The delineation of functions policy focuses responsibility on district governing boards and the Board of Governors, leaving to those governing boards the authority to delegate responsibilities to their officers and employees as appropriate (see Appendix B, particularly Sections 70901(d) and 70902(d)). As a general rule, therefore, to enable this structure of governance to operate, statutes of the Legislature should be addressed to either the Board of Governors or district governing boards. These governing bodies should be held accountable for producing the expected results, but should also be given the necessary freedom to exercise their powers in the way they believe will best achieve these results. This general rule necessarily implies that governing boards be given greater freedom to delegate, and that Education Code provisions that direct or empower officers and employees of these boards be amended to direct or empower the boards themselves.

As a part of the section-by-section review of the Code, there may be functions which the Legislature expressly chooses to make non-delegable. These provisions should be identified and amended so as to expressly be non-delegable. The general rule will be that any statutory governing board function is delegable, provided it is not expressly made non-delegable and provided the delegation is accomplished and exercised according to the specified procedure.

Finally, over time it may turn out that governing boards fail to carry out certain legislative expectations. In such instances, the Legislature should be expected to regulate activities in greater detail, including regulation of the activities of officials and employees that ordinarily would be under the supervision of governing boards.

3. *Clarifying the Role of County and Local Officials:* The K-12 structure of governance from which community colleges evolved established local districts as the system, with numerous county and local officials charged with carrying out roles to hold districts accountable. For instance, county superintendents of schools review and approve district budgets, review and approve warrants, call elections, review district territory reorganization proposals, and verify that district employees are appropriately credentialled. The Code also spells out significant accountability roles for county committees on school district organization, county auditors, county treasurers, county boards of education, and county clerks.

On the other hand, both the 1969 and the new delineation of functions assign major accountability functions to the Board of Governors, establishing the local boards and the Board of Governors as the system. The Board is given major responsibility regarding district organization and reorganization, credentialing, budget and accounting procedures, interdistrict attendance and, more important, major responsibility to provide general supervision and government of the colleges. Thus, in a very clear manner, the Legislature established the Board of Governors as the primary entity to assure accountability regarding its directives to the system.

The delineation of functions policy, however, does nothing to undo or restructure the particular roles of county and local officials; accordingly, since 1969, districts have been subject to dual accountability and compliance structures. The Board of Governors, unable to control or supervise county and local officials, and unable to control the legal functions of these officials, has been forced to develop its own methods of assuring accountability. Districts have thereby become unfairly burdened by having their actions monitored and approved at both the local and systemwide levels.

The resolution to this issue involves a case-by-case analysis of the continued appropriateness of roles played by county and local officials in light of systemwide accountability roles ascribed to the Board of Governors by virtue of

the delineation of functions policy. If the matter is one that appropriately belongs to the system (i.e., district governing boards and the Board of Governors), then accountability functions of local and county officials should be discontinued, or at least made optional for districts.

The delineation of functions policy suggests, for example, that district budgeting, the drawing of warrants, the verification of credentials, the conducting of audits, the granting of emergency apportionments, and the reorganizing of district territory should all be matters for the system. Accordingly, roles of county and local officials in overseeing or approving these activities should be discontinued, or at least made optional to district governing boards. In translating these recommendations into specific legislative proposals, considerable care must be taken not to disrupt effective relationships that exist between district and county officials. Specifically, additional thought has been given to identifying and developing those instances in which districts might opt, with Board of Governors approval, to have accountability continue to be monitored through local mechanisms.

4. *Clarifying Roles Regarding the Reorganization of District Territory:* This issue is one of the most sensitive and controversial of the clashes between the inherited K-12 governance structure and the delineation of functions policy. The Education Code contains an extensive body of law on the organization and reorganization of district territory. Most of the processes for review and approval occur at the local level, with specified roles for county committees on school district organization, county superintendents, and local governing boards. Involvement of the Board of Governors is minimized, and is usually limited to perfunctory review and approval functions that follow extensive local debate and action.

The delineation of functions policy (both 1969 and current), however, clearly implies a larger role for the Board of Governors, charging it to "*exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval and disapproval of plans therefor...*" (Appendix B, Section 70901(b)(11)).

This role is given increased importance by another section in the delineation requiring the board to "*coordinate and encourage interdistrict, regional and statewide development of the colleges.*" (Section 70901(b)(7)).

Conceptually, the matter of creating or rearranging district boundaries appears to be one for the system -- a matter between the district governing boards and the Board of Governors. Simply stated, the delineation of functions strongly implies that petitions for district organization or reorganization be initiated with the Board of Governors, coming either from college districts or the Board itself. This result is necessary if the Board is to carry out its responsibilities to coordinate the statewide development of community

colleges, and exercise general supervision over the formation and reorganization of college districts.

This is not to say, however, that local officials such as county superintendents and county committees on school district reorganization will no longer play important roles. Under the specific recommendations for legislation, the Board will continue to rely heavily upon the advice and recommendations of those closest to a reorganization issue. But the state cannot be assured that local officials, acting alone, will consider the statewide development of the community colleges. Accordingly, the Board of Governors should have the initial authority to decide whether to proceed with a reconfiguration of territory, thus allowing the Board to play a more active and directive role in assuring the statewide development of community colleges.

5. *Unburdening the Management and Control of District Property:* Inherited from the K-12 structure are approximately 300 provisions of statute which prescriptively regulate the manner in which districts manage and control real and personal property, covering such matters as contracting, conveyances, dedication of property, leasing school buildings, sale or lease of real property, sale or lease of property between agencies, sale of personal property, exchange of real property, exchange of property, temporary transfer of water stock, ownership of fixtures, and many other specific provisions.

In contrast with these many prescriptive provisions is a general delegation of authority contained in the delineation: The district governing board shall "*manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.*" (Section 70902(b)(6)).

Thus, in spite of this broad grant of authority (which was also part of the 1969 legislation), districts continue to have their management and control of property restricted by what has been characterized as a maze of redundant, conflicting, and oftentimes antiquated procedures and processes. Beyond these local procedures and processes are a number of review and approval functions of the Board of Governors. The Board must approve all state-funded capital outlay, district-funded capital outlay above a specified amount, the selection of college sites, and various other transactions concerning the management and control of property.

The proposed resolution of this issue is to develop a more generic and up-to-date body of law governing the management and control of property. There is no compelling need for the various kinds of transactions regarding property to be separately regulated, and there is obviously no need for outdated or redundant provisions. Both the University of California and the California State University have better statutory models currently in place; however, the control vested with the systemwide offices of those segments should not be

provided also to the Board of Governors. In general, according to the delineation, the Board of Governors has no express role in actively overseeing the management and control of property by districts. The Board should therefore only intervene when expressly required by statute, or when necessary on a "by exception" basis to carry out the Board's responsibility to provide general supervision of the colleges.

6. *Implementing the Permissive Code:* In 1974, the Legislature enacted a potentially fundamental change in school and community college governance when it adopted the "permissive code." In a single statute, the Legislature declared:

"On and after January 1, 1976, the governing board of any school district, including the governing board of a community college district, may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established."

Prior to this time the Code had been interpreted as "restrictive," meaning that a district had no authority to act unless there was a specific statute authorizing or directing the activity.

The impact of this new governance authority was both confused and limited, however, because the Legislature did not revise the Code to accommodate it. A string of provisions authorizing certain activities could be interpreted as legislative preemption just as easily as they could be interpreted as a number of statutes no longer necessary in light of the permissive code.

In 1979, the Legislature recognized that districts required assistance in interpreting the permissive code; accordingly, it required the Board of Governors to advise and assist districts in the interpretation and implementation of the concept (Section 72233). Later in 1982, the Legislature acted (through legislation sponsored by the Board of Governors) to *initially implement* the concept by repealing hundreds of statutes which were *clearly unnecessary* (complex and controversial revisions were left for a subsequent effort) in light of the permissive code.

The permissive code, adopted after the delineation of functions legislation, is further evidence of the Legislature's long-standing intent to reduce the prescriptiveness of its role. It is clear from the delineation of functions legislation as well as the permissive code provision that the Legislature expects the Board of Governors to play an important role in analyzing and proposing where that role may be less prescriptive.

In conducting the section-by-section analysis, attention has been given to a more complete implementation of the permissive code concept. A number of the recommendations, which should be addressed item-by-item, are controversial and complex; however, they should be raised for consideration. If endorsed in consultation and by the Board, the Legislature can then make the ultimate determination of whether the identified statutes are preemptive, or whether they can be repealed or modified so as to be consistent with the intent of the permissive code.

A second issue associated with implementing the permissive code is the reluctance of some community college officials to see specific authorizations disappear from statute. They believe clear and direct statutory authorizations are helpful when their authority to act is being challenged by other organizations and interests both in and out of the district. They maintain that these clear statutory authorizations prevent both disputes and lawsuits.

Leaving specific authorizations in the Code, although they are unnecessary in light of the permissive code, is not without consequences. First, any modification or addition to the policy must be taken to the Legislature. The presence of specific authority will tend to limit that authority as described. This is so because the presence of prescriptive authority regulating any particular subject will tend to be seen as preemption by the Legislature. Thus, the tendency to legislate is reinforced. Second, the specific authorizations will only prevent disputes and lawsuits if they are directly applicable. If individuals and organizations questioning district authority were instead pointed to the authority of the permissive code, and there were no specific statutory authorizations in place which could be construed as limiting this authority, there is a greater probability that the broad authority of the permissive code would be compelling.

To provide additional legal force and effect to the notion that repeal of a specific authorization is not meant to imply that the specific authority no longer exists, staff has developed bill language that will apply to each and every section of the code being repealed as unnecessary in light of the permissive code. That language provides:

The Legislature hereby finds and declares that numerous provisions of the Education Code authorizing community colleges to conduct various activities are unnecessary in light of Article IX, Section 14 of the California Constitution. This provision authorizes community college districts to initiate and carry out any activity which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which community college districts are established.

This act repeals or makes inapplicable to community college's numerous Education Code provisions which are no longer necessary in light of the authority of Article IX, Section 14 of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Article IX, Section 14, community college districts shall continue to have the authority provided in these provisions. The Legislature specifically declares this finding as to the following Education Code provisions which are repealed or amended by this act:

[All Education Code Sections repealed or amended will be listed here.]

7. *Specifying the Mission:* While the Legislature has open-endedly defined the mission of community colleges in a few provisions, it has enacted numerous other statutes which specifically authorize certain programs and activities. Permissive code implementation, and particularly the issue of preemption, must therefore be dealt with as a part of the review.

Section 66701 of the Code provides:

66701. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree. Their program may include but shall not be limited to: standard collegiate courses for transfer to other institutions; vocational and technical fields leading to employment; general or liberal arts courses; and community services. (*emphasis added*)

This statement of the mission (Section 78201 contains a similar statement) requires only that community colleges offer instruction through but not beyond the second year of college. The programs specified are not an all-inclusive listing, nor are they mandated. Elsewhere in the Education Code are numerous specific authorizations for programs, including: adult continuing education (8530-8535), bilingual-bicultural teacher assisting (78208), military science and tactics (78230), work experience (78240), aviation education (78270), school farms (78280), nursing classes at hospitals (78430), special classes for handicapped adults (78440), and apprenticeship programs (Labor Code 3093).

The question arises: do all of these specific authorizations, in their entirety, constitute preemption of the mission by the Legislature; or are most of these specific authorizations simply unnecessary statements of law in light of the permissive code?

With respect to UC and CSU, their missions are very broadly stated (see Sections 66500 and 66608, respectively), much like that of the community colleges in Section 66701. Specific program authorizations do not appear in the Code, but rather are decided by the systems themselves, in connection with the review and approval of new programs.

The delineation (both 1969 and current), while silent on the authority to specify and interpret the mission, does delineate specific roles regarding the establishment of new programs. The Board of Governors is required to review and approve all educational programs offered by the colleges; and district governing boards are to establish policies for, and approve, all educational programs, and to submit such programs to the Board of Governors for approval.

For the purposes of recommendations in the Education Code Review, the position has been taken that the specific program authorizations contained in the Code should not be construed as preemptory, but rather should be seen as authorizations which are now unnecessary in light of the permissive code. Accordingly, both district boards and the Board of Governors, as a part of their program review and approval processes, should determine that any new program is consistent with the broad mission of the colleges.

8. *Determining the Finance Mechanism:* Owing to K-12 origins and a reliance on property tax financing, the community college finance mechanism has always been fixed almost entirely in statute. Currently, a highly specific body of about 50 statutes control the method of computing the annual apportionment, specify the conditions under which average daily attendance may be counted, provide a procedure for census weeks in computing average daily attendance, establish the minimum days of instruction necessary to receive the apportionment, and provide various other computational procedural details. Contrasted with this highly prescriptive body of statutes is a provision within the delineation which provides that the Board of Governors shall:

Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

- (A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements,

and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

- (B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.
- (C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

Consistent with the delineation, it is being recommended that numerous statutes governing the details of community college finance be converted without substantive change to regulations of the Board of Governors. Not converted at this time is the general apportionment mechanism. This decision should be made in the context of the community college reform bill (AB 1725).

9. *Delineating the Role of the Legislature:* The delineation specifies the roles of the Board of Governors and local boards, but not the role of the Legislature. Some concept of the Legislature's appropriate function, however, appears to be essential to completing the review of the Education Code; otherwise, how can statutes be reviewed to determine whether they are an appropriate exercise of the Legislature's role?

Despite appearances, it is largely unnecessary for there to be any express statement delineating the role of the Legislature. The Legislature's role is already largely determined, *by implication*, through the delineation. Also, any attempt to construct an express statement would be conjectural because the power of the Legislature over community colleges is plenary.

Ultimately, it must be recognized that the community colleges are created by and through statutes, over which the Legislature has complete control. Accordingly, the role of the Legislature is determined by: what it chooses to delegate away, how specifically or prescriptively it chooses to delegate, and what it chooses to reserve to itself. The delineation is, in essence, a delegation of authority and responsibility to both the Board of Governors and local districts. Compared with the statutes over which it is superimposed, the delegation is both broader in the scope of powers transferred and less prescriptive as to details regulating the exercise of this authority.

Thus, since there exists a statement indicating both what the Legislature has chosen to delegate away and how it has chosen to delegate that authority, all that remains is some expression of what the Legislature should reserve for itself. This expression can also be formulated by implication: the Legislature reserves to itself all that it has not delegated away as well as the power to adjust what it has delegated.

To put this expression in more concrete terms, here are decisions and policies concerning community colleges that the Legislature will reserve to itself, even after the Education Code Review:

1. The broad mission of the colleges (Section 66701).
2. Admission -- who must be admitted, and who may be admitted (Sections 76000-76002 and 78403).
3. The major functions of the Board of Governors and its membership (Sections 70901 and 71000).
4. The major functions of district governing boards (Section 70902).
5. The amount of funding annually available to the districts and Board of Governors (Budget Act).
6. The general method of calculating state aid to districts (Sections 84700 et seq.).
7. Capital outlay projects which receive state funding (Budget Act).
8. Mandatory student fees (Sections 72240 et seq.).
9. Categorical programs and annual funding amounts, including EOPS, disabled students (DSPS), deferred maintenance, equipment renewal, GAIN, CARE, and transfer centers.
10. Employment policies for community college staff, including collective bargaining (Government Code Section 3540 et seq.), tenure, layoff, evaluation, general rights and duties, and provisions on classified employees (Sections 87200 et seq.).
11. Relationships of the Board and districts with other segments of education, including UC, CSU, CPEC, State Department of Education, and school districts.
12. Sale, lease, and use of real and personal property; and contracting for goods and services by districts (Sections 81000 et seq.).

13. Prohibitions on nondiscrimination and policies on affirmative action (Sections 66016, 72010-12, 87100 et seq., and Government Code Section 11135).
14. Uniform residency determination requirements for UC, CSU and community colleges (Sections 68000-68134).
15. Procedures for election of district trustees (Sections 5000 et seq.) and the conduct of open meetings (Government Code Sections 11120 et seq. and 54950 et seq.).
16. Mandatory holidays for community colleges (Section 79020).

Finally, assuming the Education Code is reviewed and that its provisions reflect the delineation of responsibilities, this does not mean that the Legislature will thereby be prevented from intervening into functions which it delegates to either the Board of Governors or districts. The Legislature has plenary authority and will always reserve the right to intervene. The best hope is that the Legislature, Board of Governors, district governing boards, and others will respect the delineation and attempt to work within it. Conceptually, the entity with delegated authority should have the first opportunity to exercise authority. Intervention should only occur when there has been a demonstrated failure to respond.

10. *Reviewing Statutes on Employment of Personnel:* The section-by-section analysis of Education Code provisions has never gone beyond Section 84521, which is at the end of Part 50 (Community College Finance). Remaining are some 400 provisions (Part 51) on community college employees. These statutes weren't reviewed as part of the November 1986 analysis because of a lack of time. They were not included in the *Addendum* because by November of 1987, it was quite apparent that AB 1725 would make major changes in community college employment policies. It is also apparent that the status of these changes remains unpredictable, including the timeline for a Board study of the Education Employment Relations Act. Accordingly, the determination was made to wait for the reform bill to resolve or not resolve these issues. The remaining provisions of the Code will thus be reviewed in the Fall of 1988, with legislation anticipated for 1989.

1969 DELINEATION OF FUNCTIONS LEGISLATION

CHAPTER 1026

An act to add an article heading immediately preceding Section 185 of, to add Article 3 (commencing with Section 200) to Chapter 1.5 of Division 2 of, and to add Article 1.5 (commencing with Section 1010) to Chapter 3 of Division 4 of, the Education Code, relating to public junior colleges.

[Approved by Governor August 28, 1969. Filed with Secretary of State August 29, 1969.]

The people of the State of California do enact as follows:

SECTION 1. An article heading is added immediately preceding Section 185 of the Education Code, to read:

Article 1. General

SEC. 2. Article 3 (commencing with Section 200) is added to Chapter 1.5 of Division 2 of the Education Code, to read:

Article 3. Powers, Duties, and Functions of the Board of Governors of the California Community Colleges

(71060) 200. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the Board of Governors of the California Community Colleges and the powers, duties, and functions of the local district governing boards operating junior colleges. This article shall be construed as an expression of the policy of the Legislature with regard to the functions of the above-mentioned boards, but shall not be construed as an enactment of specific legal provisions. Nothing contained in this article shall supplant existing law. Upon passage of this article by the Legislature, however, the Board of Governors of the California Community Colleges may take whatever steps are necessary to implement the policies contained in this article.

(71061) 200.1. As used in this article, "board of governors" means the Board of Governors of the California Community Colleges. "District governing board" means the governing board of a junior college district or the governing board of a district maintaining a junior college. "District" means a junior college district or a district maintaining a junior college.

(71062) 200.2. The board of governors shall adopt rules and regulations not inconsistent with the laws of this state for the government and supervision of the public junior colleges.

(71063) 200.3. The board of governors shall exercise general supervision over the formation of new junior college districts and the reorganization of existing junior college districts, including the approval or disapproval of plans therefor, and shall provide advisory service in connection with such formations

- or reorganizations. The board of governors shall encourage county committees on school district organization to include all territory of the state within public junior college districts.
- (71064) 200.4. The board of governors shall coordinate and encourage interdistrict, regional, and statewide development of public junior college programs and facilities.
- (Repealed) 200.5. The board of governors shall approve the offering of out-of-district classes by public junior college districts.
- (71028) 200.6. The board of governors shall review and approve academic master plans and master plans for facilities for each junior college district. These shall be submitted to the board of governors by the local governing board of each junior college district.
- (71066) 200.7. The board of governors shall establish minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.
- (78200) 200.8. The board of governors shall review and approve all educational programs offered in the junior colleges. For the purposes of this section, "educational program" is a series of courses leading to a degree, a certificate, a diploma, or transfer to another institution of higher education. Individual courses offered under educational programs approved by the board of governors shall be approved by the district governing board and shall not be submitted to the board of governors for approval.
- (71027) 200.9. The board of governors shall establish criteria and standards for graded and nongraded classes in junior colleges.
- (78200/
78401) 200.10. The board of governors shall approve, upon the submission of district governing boards, individual classes for adults that are eligible for state apportionments and are not part of an educational program as defined in Section 200.8.
- (71068) 200.11. The board of governors shall establish minimum standards for the employment of academic and administrative staff in junior colleges.
- (71069) 200.12. The board of governors shall conduct necessary statewide research on junior colleges and shall provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation and analysis of data for effective planning and coordination, and dissemination of information.
- (71070) 200.13. The board of governors shall facilitate articulation with other segments of higher education and with secondary education.
- (71071) 200.14. The board of governors shall represent the junior colleges before state and national legislative and executive agencies.
- (71072) 200.15. The board of governors shall administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law.

- (71073) 200.16. The board of governors shall establish a uniform system of budgeting and accounting for districts.
- (76140) 200.17. The board of governors shall establish out-of-state tuition fees and advise district governing boards on procedures governing the admission of out-of-state students and foreign students.
- (71075) 200.18. The board of governors shall establish procedures governing interdistrict attendance agreements and restrictions on attendance between districts.
- (71076) 200.19. The board of governors shall establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.
- (81031) 200.20. The board of governors shall establish recommended procedures regarding campus site selection.
- (71078) 200.21. The board of governors shall plan for, and advise on, financial assistance and scholarship programs for junior college students.
- (71079) 200.22. The board of governors shall establish minimum procedures to be used by district governing boards to insure to faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration.
- Sec. 3. Article 1.5 (commencing with Section 1010) is added to Chapter 3 of Division 4 of the Education Code, to read:

Article 1.5. Powers, Duties, and Functions of School District Governing Boards Operating Junior Colleges

- (72280) 1010. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the school district governing boards operating junior colleges and the powers, duties, and functions of the Board of Governors of the California Community Colleges. This article shall be construed as an expression of the policy of the Legislature with regard to the functions of the above mentioned boards, but shall not be construed as an enactment of specific legal provisions. Nothing contained in this article shall supplant existing law. Upon passage of this article by the Legislature, however, the Board of Governors of the California Community Colleges is hereby directed to take whatever steps are necessary to implement the policies contained in this article.
- (72281) 1010.1. As used in this article, "board of governors" means the Board of Governors of the California Community Colleges. "District governing board" means the governing board of a junior college district or the governing board of a district maintaining a junior college. "District" means a junior college district or a district maintaining a junior college.

- (72282) 1010.2. The district governing board shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more junior colleges in the district and delegate appropriate authority to officers, employees or committees of the district, the college, or the governing board.
- (72231.5) 1010.3. The district governing board shall:
- (a) Establish policies for, and approve, current and long-range educational plans and programs and promote orderly growth and development of the junior colleges within the district.
 - (b) Establish policies for, and approve, academic master plans and long-range master plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval.
- (72283) 1010.4. The district governing board shall:
- (a) Establish policies for, and approve, the total educational program of the junior college or colleges in the district.
 - (b) Establish policies for, and approve, all educational programs and to submit such programs to the board of governors for approval. For purposes of this subsection, "educational program" is defined as a series of courses leading to a degree, a certificate, a diploma, or transfer to another institution of higher education.
 - (c) Establish policies for, and approve, individual courses without referral to the board of governors.
 - (d) Approve all classes for adults and shall submit such classes as are eligible for state apportionments to the board of governors for approval.
 - (e) Approve and provide such classes, programs and facilities under the provisions of the Community Service Act, the Civic Center Act, and the Recreation Act as deemed appropriate.
 - (f) Establish policies for, and approve, all other programs and services of the junior college.
 - (g) Establish policies for, and approve, procedures for the adoption of instructional materials.
- (72284) 1010.5. The district governing board shall determine which holidays it will observe and on what days it will observe them within the framework of providing the necessary number of days of instruction to qualify for state apportionments.
- (72285) 1010.6. The district governing board shall establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.
- (72286) 1010.7. The district governing board shall determine and control the district's operational and capital outlay budgets and shall present the budgets to county authorities for the purposes of establishing the district tax rates. The district governing board shall determine the need for elections for

- override tax levies and bond measures and to request that such elections are called.
- (72287) 1010.8. The district governing board shall manage and control district property. The district governing board may contract for the procurement of such goods and services as authorized by law.
- (72288) 1010.9. The district governing board may receive and administer gifts, grants, and scholarships.
- (72289) 1010.10. The district governing board may establish such student fees as it is authorized to establish by law.
- (72290) 1010.11. The district governing board shall employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors. The district governing board shall establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.
- (72291) 1010.12. The district governing board shall provide such auxiliary services as deemed necessary to achieve the purposes of the junior college.
- (72292) 1010.13. The district governing board shall establish rules and regulations governing student conduct. The district governing board shall establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level.
- 1010.14. The district governing board is authorized to apply directly to federal agencies or state agencies operating federal programs in order to obtain federal funds in accordance with general policies established by the board of governors.

PART 43.5. THE CALIFORNIA COMMUNITY COLLEGES

70900. There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate the fiscal and educational effectiveness of community college districts according to established outcome measures.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed

70902. (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and to request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the right to participate effectively in district and college

budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any district, officer, employee, or committee of the California Community Colleges as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

governance and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community colleges.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision (b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

CHANCELLOR'S OFFICE

CALIFORNIA COMMUNITY COLLEGES

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November 9, 1987

TO: Superintendents and Presidents
Community College Organizations
Other Interested Parties

FROM: John D. Randall
Interim Chancellor

SUBJECT: Education Code Review: Invitation to Participate

The Board of Governors invites your assistance in developing legislation to rewrite the Education Code as it pertains to community colleges.

As you may know, the "Education Code Review" was initiated in 1986, and is intended to be a major governance reform for the community colleges. The ultimate aim of this review is to assure that all provisions of the Education Code are consistent with and otherwise reflect the Legislature's broad "delineation" of authority to local districts and the Board of Governors. This broad delineation was first enacted in 1969, and has recently, after extensive consultation, been updated and incorporated into AB 1725.

The recommendations in the attached document, Education Code Review, are preliminary in nature and should not yet be construed as recommendations of the Chancellor or Board of Governors. Instead, the recommendations flow from a legal analysis of some 2200 provisions in the Education Code. The recommendations are being reviewed in depth by a special advisory committee composed of representatives of major community college organizations. In addition, they will be reviewed through the Chancellor's established consultation process, and will be subject to the continuing review of the Board of Governors during the first six months of 1988.

If you would like to participate in the Education Code Review at this early stage, we would be pleased to consider your comments. By or before Thursday, December 10, 1987, please provide Thomas J. Nussbaum, Vice-Chancellor and General Counsel, with your analysis. If it is more convenient to provide your views by telephone (916-445-4826), or in a meeting, we will attempt to accommodate all such requests. Also, additional copies of these materials are available upon request.

If you elect not to participate in this phase of the review, please be assured that there will be later opportunities. Based upon the special advisory committee's work, as well as the comments of those who wish to participate in the initial review, a revised set of recommendations to rewrite the community college portions of the Education Code will be issued in late December. These

recommendations will be widely distributed, and will serve as the basis for drafting legislation which will be under the continuing review of the Board of Governors during the first six months of 1988. While the legislation to implement these recommendations will be introduced early in 1988, all recommendations and the legislation itself will again be subjected to extensive review and comment, both in and out of the Legislature.

If you have any questions about the Education Code Review, or if you wish additional copies of these materials, please contact Thomas J. Nussbaum, Vice-Chancellor and General Counsel at (916) 445-4826. Again, please remember that the deadline for participation in this initial phase is Thursday, December 10, 1987.

APPENDIX D

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